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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of	)	
	)	
Calling Party Pay Service Option	)	
in the Commercial Mobile Radio Services	)	WT Docket No. 97-207
	)	
	)	

BELL ATLANTIC COMMENTS

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BELL ATLANTIC COMMENTS

Introduction and Summary

Bell Atlantic[1] submits these comments in response to the Commission's Notice of Inquiry regarding Calling Party Pays ("CPP") service (FCC 97-341, released October 23, 1998).

CPP is currently being offered in various markets in response to market demands. The Bell Atlantic telephone companies currently offer competitive billing services and tariffed billing information to Commercial Mobile Radio Service ("CMRS") providers that enable them to provide CPP service, and a subsidiary of Bell Atlantic Mobile offers CPP in several Southwestern markets. Wider availability of CPP is, however, being hampered by two serious problems:

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[1] These comments are submitted on behalf of Bell Atlantic Mobile, Inc. ("BAM"), and the Bell Atlantic telephone companies: Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc., New York Telephone Company and New England Telephone and Telegraph Company ("Bell Atlantic").

First, the industry needs to minimize the opportunities for making unbillable calls to CPP service, known as "leakage." CMRS carriers cannot expand their CPP offerings as long as callers can easily evade CPP charges.

Second, the Commission should ensure that CMRS providers can meet market demand for CPP without state regulation of CPP rates or civil suits threatening to impose liability on CMRS carriers that offer CPP service. The Commission should declare that states may not regulate CPP rates anymore than they can regulate other CMRS rates. The Commission should also declare that CMRS carriers may not be subject to lawsuits seeking refunds or other damages based on a caller's use of CPP. CMRS providers will be discouraged from offering CPP unless the Commission firmly asserts its authority under Section 332(c) to preempt such lawsuits.

Other than these steps, however, no FCC regulations are needed. There is no reason for the Commission to impose any obligations or requirements on CMRS providers' CPP offerings, or on CPP billing arrangements between local exchange carriers ("LECs") and CMRS providers. Such regulation would be inappropriate, would impose costs on carriers, and would conflict with Commission decisions finding that market forces should govern wireless service offerings and LEC billing services.

I. CPP SERVICE WILL NOT BE IMPLEMENTED ON A WIDESPREAD BASIS UNTIL THE INDUSTRY RESOLVES TWO CRITICAL PROBLEMS.

CPP service has been available in the United States for several years, but only on a limited scale. In order to implement CPP service on a broad scale, two critical problems must be solved: the "leakage" of unbillable calls and the threat of state regulation and civil lawsuits. If the Commission decides that widespread availability is in the public interest, it should focus its resources on helping the industry solve these problems.

A. The Industry Needs To Minimize The Opportunities For Unbillable Calls to CPP Service

A CMRS carrier that offers CPP service today faces a significant risk that it will not be able to bill the caller for many of the calls to its CPP service. This leakage problem can occur where the caller is not the subscriber for the phone (e.g., public telephones, hotels, hospitals) and where the call transits another carrier's network (e.g., long distance calls). While industry-wide efforts have made some headway in addressing leakage, evidence referenced by the Notice reveals that it is still an impediment to expanding CPP service.

There will likely need to be a variety of solutions to the leakage problem. In some cases, the carriers will develop ways to bill for calls that are unbillable today. In other cases, the carriers will simply have to identify the unbillable calls so that they can be blocked or billed to the CMRS subscriber on an exception basis. But until more progress has been made, the problem of unbillable calls will remain a major obstacle to more widespread implementation of CPP service.

B. The Commissions Must Preempt Regulation of CPP Rates And Suits Seeking to Impose Liability Against CMRS Providers Offering CPP.

The second major obstacle to widespread implementation of CPP service is the threat of state rate regulation and civil lawsuits.

States may attempt to assert regulation over CPP rates or the disclosure of those rates on the theory that those rates will be paid by landline subscribers and are thus within their jurisdiction. Such state regulation would violate federal law because CPP rates are CMRS rates, and thus are preemptively deregulated. Section 332(c) of the Communications Act provides that "no State or local government shall have any authority to regulate . . . the rates charged by any commercial mobile service . . . . ." 47 U.S.C. §332(c)(3). To avoid state regulatory efforts which would frustrate expansion of CPP service, the Commission should affirmatively declare that states may not impose any rules or requirements that affect the rates charged for CPP service or the notice and disclosure of those rates.[2]

The threat of massive liability from class action lawsuits is also a severe obstacle to expanded CPP service. The wireless industry has been inundated with class action lawsuits complaining of practices that formerly had been insulated from challenge by the Commission's primary jurisdiction and the carriers' filed tariffs. The 1995 Private Securities Litigation Reform Act severely restricted the filing and prosecution of securities class action lawsuits and, as a consequence, plaintiffs' class action counsel have turned to class action litigation against the

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[2] For several years, CMRS rates have been governed by private contracts, rather than tariffs. The Commission should continue this policy and allow CMRS providers' CPP rates to be governed by private contracts and preempt state efforts to impose tariff or contract obligations on CPP. If the Commission decides that CPP rates should be disclosed to the caller, it should impose uniform federal requirements for such disclosure to avoid a patchwork of state disclosure requirements.

wireless industry, targeting CMRS providers because of a perceived jurisdictional vacuum arising from the detariffing of CMRS. These class actions seek rebates of charges paid by millions of wireless subscribers based on claims relating to carrier pricing decisions, such as rounding up calls to the nearest minute. The class actions assert that the rates charged those subscribers were excessive or unjustified. The damages they seek necessarily force courts to determine what rates "should have been" charged to determine whether any alleged "excess" should be refunded to plaintiffs. These class actions are forcing CMRS providers to devote extensive resources in defending against them. The problem has become so widespread that one cellular carrier has petitioned the Commission to intervene and declare that actions seeking such damages are preempted by Section 332(c) because they require the courts to engage in retroactive rate regulation.[3]

The attractiveness of class actions against the CMRS industry will be significantly enhanced if callers required to pay for CPP service assert that they were customers of the CMRS provider and that they were forced to pay excessive charges. Because the entire purpose of CPP service is to have the originating caller rather than the receiving subscriber pay for the call, the calling party will be responsible for the charges. Because the calling party is the customer of the CMRS provider, CMRS carriers will be significantly expanding their base of customers -- but without any ability whatsoever to define the terms of that relationship through tariffs or written contracts. They would be exposed to massive claims of civil liability based on claims that, for example, the putative plaintiffs did not know their call would be terminated on a wireless phone,

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[3] Southwestern Bell Mobile Systems, Inc., Petition for Declaratory Ruling, DA 97-2462 (filed Nov. 12, 1997).

plaintiffs were not told of the charge, disclosure of the charge was inadequate, or that the quality of service plaintiffs received did not equate to landline service. All of these claims, coupled with demands for payment of millions of dollars in refunds, have already been brought against BAM and other CMRS providers for service to their own wireless subscribers. This attempt to engage the courts in rate regulation is occurring without recourse to the Commission, even though it has both the mandate and the expertise to address these matters.

Unless such claims are expressly declared to be in violation of Section 332(c), they will present a significant disincentive to any CMRS provider in deciding whether to offer CPP. Broader availability of CPP is thus directly tied to the Commission's assertion of its authority under Section 332(c) to preempt actions seeking to impose liability on CMRS providers arising from their offering of CPP service. The Commission should expressly declare that retroactive recalculation of charges to an entire base of customers constitutes preempted ratemaking.[4]

II. THERE IS NO BASIS FOR FCC REGULATION OF CPP OFFERINGS OR LEC BILLING SERVICES FOR CALLING PARTY PAYS.

As a service option that some cellular, paging and Personal Communications Service ("PCS") carriers offer where the party placing the call or page pays the airtime charge, CPP is functionally equivalent to the charges that long distance carriers and information services providers collect from callers for the services they currently provide. In each case, the business relationship is between the caller and the service provider. There is no reason for the

[4] Such a declaration would not intrude on the authority of state commissions to regulate the "terms and conditions" of CMRS service under Section 332(c). It would merely stop improper efforts to extort huge sums from CMRS providers through the class action remedy.

Commission to impose any regulatory requirements on CMRS providers' CPP offerings or on CPP billing arrangements between LECs and CMRS providers. Such regulation is not needed, will impose costs on carriers, and will conflict with Commission decisions finding that market forces should govern wireless service offerings and LEC billing services.

Cellular, PCS and other wireless carriers will offer and price CPP in response to market demand for it, just as they do for other wireless features and offerings such as roaming and call-forwarding. In the 1993 amendments to Section 332(c) of the Communications Act, Congress adopted a new deregulatory model for wireless services which relied on market forces, rather than regulation, to ensure expansion of CMRS services. The Commission has repeatedly emphasized that competition is far preferable to regulation, and thus that new regulations should not be adopted unless there is a compelling need for doing so.[5] That model has worked well. Wireless service is competitive and is expanding rapidly, whether measured by the sweeping growth in subscribers or the steady entry of competing carriers. There is no basis for the Commission to consider altering course and considering any imposition of regulatory burdens on carriers offering CPP.

Similarly, the billing services provided by LECs for CPP service are competitive and should not be regulated by the Commission. More than 10 years ago, the Commission determined that "billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act."[6] The Commission also decided that it could not

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[5] *See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 7988, 8004 (1994).

[6] *In the matter of Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150, 1170 (1986).

exercise its ancillary jurisdiction under Title I unless it would "be directed at protecting or promoting a statutory purpose."[7] The Commission further concluded that "because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period."[8]

The Commission's findings that LEC billing services are subject to sufficient competition were well documented. The record clearly showed that "competition is defined not only by credit card companies, collection agencies, service bureaus and the LECs, but by the customers (ICs) themselves."[9] This is because carriers can themselves record all the relevant call detail they need to prepare a bill, including the caller's telephone number, and can use the caller's number to obtain the billing name and address information from the LEC to mail their bill to the caller. The Commission's record also showed that "there are no barriers to entry" and that "capital costs are relatively low."[10]

The Commission recently reiterated its conclusions that LEC billing services are competitive, even for 900 information services. In *Audio Communications*, the Commission found that competition for billing services for 900 information services "are open to even greater potential competition than the LEC billing and collection services, which the Commission found

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[7] *Id.* (quoting Second Computer Inquiry, 77 F.C.C.2d 384, 433 (1979)).

[8] *Id.*

[9] *Id.*

[10] *Id.* at 1171.

to be subject to competition in its *Detariffing Order*."[11] The Commission specifically found, for example, that credit card companies were providing billing services for these non-subscribed services.[12]

The Commission should reach the same conclusion with regard to LEC billing services for CPP service. Billing a charge for a long distance call or a 900 information service is no different than billing an airtime charge for a call to a CMRS telephone or pager. In each case, the service provider establishes a business relationship with the caller and can bill the caller itself or contract with third party billing agents.[13]

III. CMRS CARRIERS MAY OBTAIN THE BILLING NAME AND ADDRESS INFORMATION FROM LOCAL EXCHANGE CARRIERS UNDER TARIFF OR CONTRACT, BUT NOT AS AN UNBUNDLED NETWORK ELEMENT.

The Commission's Notice questions whether there are unbundled network elements that incumbent LECs should be required to provide for CPP service. The answer is no. First, CPP service must be based on arrangements that are universally available for all carriers with customers that can place CPP calls. Unbundled network elements are not universally available today because the Commission has not imposed that obligation on long distance companies, payphone providers and other CMRS carriers. It is therefore not feasible for the industry to rely

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[11] *In the Matter of Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act*, 8 FCC Rcd 8697, 8699 (1993).

[12] *Id.* at 8700.

[13] The only information the service provider needs from the LEC is billing name and address ("BNA") information for the LEC's subscribers. That information is readily available under Bell Atlantic's and other LECs' tariffs.

on unbundled network elements to provide CPP service. Calls from these companies' customers would present a serious leakage problem and threaten the viability of CPP service.

Second, CMRS carriers can already obtain the billing information they need to provide CPP service from LECs under tariffs or contracts. There are, however, no network elements that CMRS carriers are entitled to purchase for providing CPP service. Congress defined "network elements" as the physical "facilit[ies] or equipment" used to transmit telephone calls, together with any "features, functions, and capabilities" provided by these physical elements.[14] These "features, functions and capabilities" include "information sufficient for billing and collection" to the extent the information is provided "by means of" one of the physical elements of the telephone network that otherwise must be unbundled. The Commission has therefore held that "to comply fully with [the Act's unbundling requirements] an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for . . . billing of unbundled network elements . . . ."[15]

CMRS providers do not purchase any physical elements of the telephone network on an unbundled basis when they provide CPP service. Instead, they are processing and completing calls from other companies' customers to their subscribers. They are therefore not entitled to billing information as a network element under the unbundling requirements of the 1996 Act. They can instead obtain that information from Bell Atlantic and other LECs under tariffs or contracts.

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[14] 47 U.S.C. § 153(29).

[15] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15767 (1996).

CONCLUSION

If the Commission decides to facilitate widespread availability of CPP service, it should focus on the problems of unbillable calls, state regulation of CPP rates and the risk of civil liability for CPP service. As long as these problems remain, they will inhibit CMRS carriers from broadening the availability of CPP service.

The Commission should not, however, impose new requirements or obligation on CMRS providers offering CPP or on LECs offering billing services for CPP. The Commission has already decided not to regulate CMRS rates or the billing services provided by LECs. These decisions were based on sound policy and legal considerations. The Commission should continue to follow these precedents and not attempt to regulate CMRS providers' CPP rates or LEC billing services for CPP.

Respectfully submitted,

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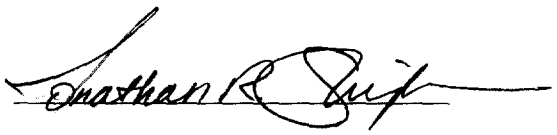
Dated: December 16, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 1997, a copy of the foregoing "Bell Atlantic Comments" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.



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